

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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MARIA HUYNH,

Plaintiff,

v.

FIRST NATIONAL BANK OF NEVADA;
et al.,

Defendants.

3:09-cv-00577-LRH-VPC

ORDER

Before the court is plaintiff Maria Huynh's ("Huynh") motion to remand filed on October 1, 2009. Doc. #3¹. Defendants filed an opposition on October 19, 2009. Doc. #12. Thereafter, Huynh filed a reply on November 1, 2009. Doc. #16.

Also before the court is Huynh's motion to stay filed on October 13, 2009. Doc. #8.

I. Facts and Procedural History

In March 2006, Huynh purchased real property through a mortgage and note executed by defendant First National Bank of Nevada. She eventually defaulted on her mortgage and defendants initiated foreclosure proceedings.

Subsequently, on August 25, 2009, Huynh filed a complaint in state court alleging fourteen separate causes of action against defendants. Doc. #1, Exhibit 1. Defendants removed the matter to

¹ Refers to the court's docket entry number.

1 federal court on federal question grounds. Doc. #1. Thereafter, Huynh filed the present motion to
2 remand. Doc. #3.

3 **II. Legal Standard**

4 Under 28 U.S.C. § 1441, “any civil action brought in a State court of which the district
5 courts of the United States have original jurisdiction, may be removed by the defendant or the
6 defendants, to the district court of the United States for the district and division embracing the
7 place where such action is pending.” 28 U.S.C. § 1441(a).

8 Removal of a case to a United States district court may be challenged by motion. 28 U.S.C.
9 § 1441(c). A federal court must remand a matter if there is a lack of jurisdiction. *Id.* Removal
10 statutes are construed restrictively and in favor of remanding a case to state court. *See Shamrock*
11 *Oil & Gas Corp. v. Sheets*, 313 U.S. 100, 108-09 (1941); *Gaus v. Miles, Inc.*, 980 F.2d 564, 566
12 (9th Cir. 1992). On a motion to remand, the removing defendant faces a strong presumption against
13 removal, and bears the burden of establishing that removal is proper. *Gaus*, 980 F.2d at 566-67;
14 *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 403-04 (9th Cir. 1996).

15 **III. Discussion**

16 A case may be removed to federal court if the action arises under federal law. *See* 28 U.S.C.
17 § 1331; 28 U.S.C. § 1441. A case arises under federal law if the complaint establishes either that
18 federal law created the cause of action, or that the plaintiff’s right to relief “requires resolution of a
19 substantial question of federal law.” *Franchise Tax Bd. of Cal v. Constr. Laborers Vacation Trust*
20 *for S. Cal.*, 463 U.S. 1, 13 (1983); *see also, Caterpillar Inc. v. Williams*, 482 U.S. 386, 382 (1987).

21 Here, Huynh argues that there is no federal question because all of her claims are rooted in
22 either state law or common law. Thus, according to Huynh, there are no federal causes of action
23 supporting removal.

24 However, federal question jurisdiction will lie over state law claims that implicate
25 significant federal issues. *Grable & Sons Metal Prod. v. Darue Engineering & MFG.*, 545 U.S. 308,
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1 312 (2005). In her complaint, Huynh repeatedly references defendants' violations of federal laws
2 including defendants' concealment of information in violation of federal securities and banking
3 laws. Further, her thirteenth cause of action for conspiracy directly references the Truth in Lending
4 Act, the Real Estate Settlement Procedures Act, and the Home Ownership Protection Act. *See* Doc.
5 #1, Exhibit 1.

6 Huynh argues that these are "incidental" references to federal laws referred to only as a
7 compilation to the state violations. *See* Doc. #17. However, the court finds that these references are
8 not incidental; they are part of the requisite framework for her claims. Huynh's conspiracy claim
9 necessarily depends on the resolution of federal law because in order to have conspired to violate
10 her rights defendants must have first violated the federal statutes at issue. Thus, on the face of the
11 complaint, there are questions of federal law establishing federal question jurisdiction. *See e.g.*,
12 *California ex. Rel Lockyer v. Dynergy, Inc.*, 375 F.3d 831, 841 (9th Cir. 2004) (finding that
13 removal was proper because the state causes of action turned on the defendant's compliance with
14 federal regulations).

15 IT IS THEREFORE ORDERED that plaintiff's motion to remand (Doc. #3) is DENIED.

16 IT IS FURTHER ORDERED that plaintiff's motion to stay pending the motion to remand
17 (Doc. #8) is DENIED as moot.

18 IT IS SO ORDERED.

19 DATED this 14th day of January, 2010.



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22 LARRY R. HICKS
UNITED STATES DISTRICT JUDGE
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